IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.122 of 2007

Decided on: ***October 23, 2007.***

State of Himachal Pradesh ***…Petitioner.***

VERSUS

Vivek ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the petitioner: ***Mr.M.L.Chauhan, Addl.A.G.***

For the respondent:

Kuldip Singh, Judge (Oral)

The State has filed this revision against the judgment of acquittal recorded by Juvenile Justice Board, Shimla (for short 'Board') on 1.6.2007 in case No.38/2005.

2. The respondent was prosecuted under Section 7 of the "H.P. Unfair Practice Means in H.P.U., Board and Other Specific Examination Act, 1984". The prosecution case in brief is that on 15.3.2005 A.S.I. Amarjeet, along with HHC Roop Singh, was on patrol duty, Centre Incharge of School submitted a written complaint Ext.PW-1/A to them. As per Ext.PW-1/A at about 4:10 p.m. while the examination of Mathematics paper of Class-8 was in the progress, a student named Vivek Roll No.56232 ran away from the verandah where he was sitting

---

Whether the reporters of the local papers may be allowed to see the judgment? Yes

along with his answer sheet bearing No.688291. He was chased but he jumped over the wall and ran away. On the basis of complaint Ext.PW-1/A the police registered F.I.R. No.46/2005 Ext.PW-9/A. The case was investigated by PW-9 A.S.I. Amarjeet. The respondent was arrested on 16.3.2005 and answer sheet Ext.PW-1/F and question paper Ext.PW-1/G were allegedly recovered from him. The respondent was below 18 years of age on the day of occurrence and, therefore, he was produced before the Board and was released on bail 17.3.2005. After conclusion of the investigation, challan was presented before the Board, notice of accusation was put to the respondent, under Section 7 of "the H.P. Unfair Practice Means in H.P.U., Board and Other Specific Examination Act, 1984", who pleaded not guilty. The prosecution examined nine witnesses. The respondent was examined under Section 313 Cr.P.C. His defence is denial simplicitor. He did not lead any evidence in defence. The Board acquitted the respondent on 1.6.2007, hence, the State has filed the present revision petition.

3. I have heard the learned Additional Advocate General and have also gone through the record. PW-1 Nand Lal has proved complaint Ext.PW-1/A. In cross examination he has stated that answer sheet and question paper were not recovered from the respondent in his presence. He did not check whether respondent had left anything at his seat. He signed recovery memo Ext.PW-1/H because the police asked him to sign. PW-2 Surinder Kaur has stated that she was on duty in the verandah

and was the Supervisor of the row where the respondent was writing his examination. She was busy giving answer sheets to the students when respondent ran away from the examination hall along with his answer sheet. The mother of the respondent brought the answer sheet and the question paper to the school and handed over to the Principal Lajwanti Sharma (PW-3). In cross examination, she has stated that answer sheet and question paper were not recovered in her presence. PW-3 Lajwanti Sharma, Principal of the School, has stated that at about 4:10 p.m. she heard a noise that respondent had run away from the examination hall with answer sheet and question paper. In cross examination, she has stated that she had not seen the respondent while running. She was told by the Superintendent that in the bundle answer sheet of particular roll number was missing. PW-4 Inspector Shamsher Singh prepared the challan. PW-5 Dharam Dass registered the F.I.R. Ext.PW-9/A. PW-6 Piare Lal Thakur has stated that on 15.3.2005 he was Deputy Superintendent Annual Examination at Government Senior Secondary School, Nalagarh. There was a noise in the hall that a boy has run away, later on it was found that the boy was Vivek. He took away the answer sheet along with him. In cross examination, he has stated that police did not inform him regarding the recovery of paper. He has also stated that he was not aware of the name of the respondent on that date nor he knew him earlier. PW-7 Kamal Singh has stated that he was on duty in the evening session on 15.3.2005 at Government Boys

Senior Secondary School, Nalagarh. He has stated that he heard the noise at about 4:10 p.m. that a boy has run away with the answer sheet. The respondent ran towards gate. In cross examination, he has stated that he has not seen the respondent running as he was attending his row. PW-8 Parkash Chand Sharma, Senior Assistant, H.P. School Education Board, Dharamshala has stated that respondent was allotted Roll No.56232 as private candidate. He has proved documents issued by the Education Board such as Roll No. slip, admission form, cut list, signature chart etc. PW-9 A.S.I. Amarjeet Singh is the Investigating Officer. He has stated that respondent during investigation has produced answer sheet Ext.PW-1/F, question paper Ext.PW-1/G and certificate Ext.PW-9/C for which recovery memo Ext.PW-1/H was prepared. In cross examination, he has stated that recovery memo was prepared in H.R.T.C. Workshop Nalagarh, none was present there except witnesses mentioned in the recovery memo.

4. The recovery memo Ext.PW-1/H is witnessed by PW-1 Nand Lal and PW-2 Surinder Kaur. PW-1 Nand Lal in his cross examination has stated that respondent did not hand over question paper and answer sheet to the police in his presence. PW-2 Smt.Surinder Kaur has stated that answer sheet and question paper were handed over by the mother of the respondent to PW-3 Lajwanti Sharma. She was not present there and police took into possession those items vide memo Ext.PW-1/H. PW-9 Amarjeet Singh, Investigating Officer, has

stated that recovery memo was prepared in H.R.T.C. Workshop, Nalagarh. The prosecution has miserably failed to prove that question paper and answer sheet of Mathematics paper were taken away by the respondent on 15.3.2005 from the examination centre. The Board has noticed material contradictions in the prosecution story and has rightly appreciated the material on record. In revision the scope of interference is limited. The appreciation of evidence is not permissible unless the judgment is perverse and view taken by the Court below is not at all possible from the material on record. The present case does not fall in that category. The Board has rightly appreciated the material on record and has recorded a finding of fact. The view taken by the Board is possible which calls for no interference. Moreover, notice of accusation was put to the respondent under Section 7 of "the H.P. Unfair Practice Means in H.P.U., Board and Other Specific Examination Act, 1984" whereas the name of the Act is the Himachal Pradesh Prevention of Malpractices at University, Board or other Specified Examinations Act, 1984. This has not been disputed by learned Additional Advocate General. Thus, even the notice of accusation was not put to the respondent correctly. Hence, the revision petition is dismissed.

October 23, 2007 ***(Kuldip Singh), J.***

(soni)